CONTRACT FOR SUPPLIES AND/OR SERVICES

The undersigned AGENCY and VENDOR, the PARTIES to this CONTRACT, agree to perform in accordance with the provisions of this CONTRACT consisting of this page and the attachments described below.

- 1. <u>TERM OF CONTRACT</u>: (Attachment "a-1") The term of this CONTRACT and provisions for renewal and termination are as specified in this attachment.
- 2. <u>DESCRIPTION OF SUPPLIES AND SERVICES</u>: (Attachment "a-2") VENDOR shall provide the supplies and/or perform the services specified in this attachment.
- 3. <u>PRICING/COMPENSATION</u>: (Attachment "a-3") VENDOR shall be compensated for the supplies and/or services contracted in accordance with the rates or prices established in this attachment.
- 4. <u>STANDARD TERMS, CONDITIONS AND CERTIFICATIONS</u>: (Attachment "a-4") Standard terms, conditions and certifications applicable to this CONTRACT are specified in this attachment.
- 5. OTHER ATTACHMENTS: Additional terms and conditions are shown in the following attachments:

	AGENCY Supplemental Terms and Conditions	Yes X No
Attachment "a-6"	VENDOR Provided Additional Material and Exceptions	res NoX

In Witness whereof, AGENCY and VENDOR have caused this CONTRACT to be executed by duly authorized representatives of the respective PARTIES on the dates shown below

WENDOR: The Liberty Consulting Group

ILLINOIS COMMERCE COMMISSION:

John Antonuk President	Scott Wiseman Executive Director
Date 13 March 2002	Date 3 15 02
65 Main Street P.O. Box 237 Quentin, Pennsylvania 17083 (717) 270-4500 (voice) (717) 270-0555 (facsimile)	Myra Karcgiancs General Counsel Date March 14 2002 Jane K. Fields State Purchasing Officer Date 3/15/02

FOR STATE USE ONLY	
CONTRACT #ComEd 02-02	
CMS CLC	CMS CFO
Source Selection: IFB (including Multi-step) RFP Exempt from Code Other (describe)	RFP/P&A Small Sole Source Emergency

Attachment "a-1"

TERM OF CONTRACT

- 1. Beginning and end date of initial term. This CONTRACT shall begin upon execution. The CONTRACT end date shall be May 1, 2003, or such earlier date at which all performance under the contract is completed, except that provisions relating to liability, insurance, and confidentiality concerning the subject matter of the contract shall survive the end date of the contract.
- 2. Renewal. Except as otherwise shown, the AGENCY reserves the right to renew the CONTRACT for the same or lesser length of term as the initial term and on the same terms and conditions.
- 3. Early Termination. The AGENCY reserves the right to terminate this CONTRACT without cause and without penalty or further payment being required upon 30 days prior written notice. Upon exercise of this right, VENDOR shall be paid for supplies and services satisfactorily provided and for authorized expenses incurred up to the time of termination.

Attachment "a-2"

DESCRIPTION OF SUPPLIES AND SERVICES

- 1. Need for Supplies and Services. On February 6, 2002, the Illinois Commerce Commission ("AGENCY") entered an order in Docket No. 01-0664 ("Order") that approved the resolution of the issues in that proceeding as presented in a Draft Agreed Order filed with AGENCY in that proceeding on January 23 2002, and ordered that an audit of the scope set forth in the prefatory portion of that order be conducted in the manner set forth therein. The services contemplated by this CONTRACT are needed to effectuate the resolution of the issues in Docket No. 01-0664 in the manner contemplated by the Order. The services to be performed under this CONTRACT are intended ultimately to result in the introduction of evidence into the record in AGENCY Docket No. 01-0423, which involves a Petition filed by Commonwealth Edison Company ("ComEd") for changes in its rates for electric delivery services and for certain other relief.
- 2. AGENCY's Goal. AGENCY's goal is to contract with VENDOR to provide an audit, limited in scope to rate case (operating and maintenance expense, and rate base) revenue requirement impacts in Docket No. 01-0423 of the remedial activities across the entire ComEd transmission and distribution system identified in (A) the reports of ComEd to AGENCY and the City of Chicago ("City") in September and December 1999, and subsequent reports by ComEd to AGENCY and the City of the ComEd system rehabilitation program, (B) the reports to AGENCY prepared by Vantage Consulting, Inc., in 1999, and by The Liberty Consulting Group in 2000 and 2001 (collectively referred to as "Consultant Reports"), and (C) ComEd responses to the Vantage and Liberty reports. The AGENCY's goal includes, in addition to the conduct of the audit itself, submission of expert witness testimony, preparation for and attendance at hearings, and the retention of counsel throughout the audit process and throughout all evidentiary proceedings, including, by way of example, to conduct discovery, attend hearings, prepare and make all filings, including but not limited to briefs, represent expert witnesses, present expert witnesses for cross examination, cross examine witnesses, and introduce the audit report into the evidentiary record for consideration by AGENCY in the pending ComEd delivery services proceeding, Docket No. 01-0423, so that the results of the audit can be used in making rate base and revenue requirement determinations.
- 3. Supplies and/or Services Required.
 - a. Deliverables.
 - (1) Identification of work to be performed.
 - (a) VENDOR shall familiarize itself with the following materials.
 - 1. The record, including the Administrative Law Judges' ("ALJs") February 8, 2002, Proposed Interim Order, and any more recent AGENCY interim orders, in AGENCY's Docket No. 01-0423.
 - 2. AGENCY's February 6, 2002, Order in Docket No. 01-0664.
 - 3. Documents identified in sub-paragraph (d) below.
 - 4. The Illinois Public Utilities Act, particularly Article IX, "Rates" [220 ILCS 5/9].
 - (b) VENDOR shall deliver a detailed work plan to AGENCY Project Manager not later than 15 days after CONTRACT execution.
 - 1. The detailed work plan shall include the following details for each work step
 - A. The reason for the work step.

- B. The work product of the work step.
- C. The scheduled start date and completion date for the work step.
- D. Names of VENDOR's auditors assigned to the work step.
- E. Hourly billing rates for each of VENDOR's auditors.
- F. Total contract work hours, total work hours per auditor, total work hours per work step, and work hours per auditor per work step.
- G. The percent of each auditor's work hours for each work step that will be spent on site at ComEd.
- 2. The detailed work plan shall include a description of evaluative criteria, performance measurement techniques, data sources, analytical methods, and standards that VENDOR plans to use in conducting the audit and in recommending rate base and revenue requirement adjustments. Except as expressly agreed between VENDOR and AGENCY Project Manager, the detailed work plan will in all respects be consistent with the preliminary work plan furnished by VENDOR to Agency on February 28, 2002.
- 3. The detailed work plan shall include an explanation of exactly how VENDOR considers the General Accounting Office's Generally Accepted Governmental Auditing Standards, June 1994, including Revisions No. 1, 2, and 3 ("GAGAS") to be applicable to this audit and specifically how VENDOR will comply with those applicable portions of GAGAS.
- 4. AGENCY Project Manager shall approve VENDOR's detailed work plan or suggest changes within five work days after receipt.
- 5. VENDOR, however, shall not delay work under this contract pending AGENCY Project Manager's approval of the detailed work plan.
- (c) VENDOR shall evaluate the adjustments to operations and maintenance expenses and to rate base that AGENCY accepted in its Interim Order in Docket No. 01-0423 for their effects on the areas VENDOR will review and incorporate their effects in VENDOR's final audit report as appropriate.
- (d) VENDOR shall examine in detail (A) the reports of ComEd to AGENCY and the City in September and December 1999, and subsequent reports by ComEd to AGENCY and the City of the ComEd system rehabilitation program, (B) the Consultant Reports, as defined in paragraph 2, above, and (C) ComEd responses to the Consultant Reports.
- (e) On the basis of the examination described in sub-paragraph (d) above, VENDOR will seek such further information as it determines necessary from any source appropriate under GAGAS and will audit the remedial activities across the entire ComEd transmission and distribution system identified in any one or more of the ComEd Reports to AGENCY and the City, the Consultant Reports, and the ComEd Responses, including without limitation maintenance activity, infrastructure development and reinforcement.
- (f) On the basis of the audit described in sub-paragraph (e) above, VENDOR will make findings identifying the rate case (operating and maintenance expense, and rate base) revenue requirement impacts of the remedial activities, and report to the AGENCY

concerning such findings, including any and all recommendations for specific adjustments to rate base or revenue requirements in Docket No. 01-0423. To the extent possible using ComEd's records, VENDOR will determine the extent to which ComEd included costs in its revenue requirement that VENDOR recommends for adjustment. If VENDOR is not able to make such determination it will so state in its report and include the reason in as much detail as possible. The entire conduct of the audit will be controlled by GAGAS, as applicable to an undertaking of this nature.

- (g) VENDOR shall provide the AGENCY Project Manager with progress reports and the final report as shown in sub-paragraph 3a.(2) below.
- (h) VENDOR shall provide the AGENCY sworn expert testimony describing VENDOR's understanding of how the GAGAS apply to this audit and specifically how VENDOR complied with those applicable portions of GAGAS, describing VENDOR's audit findings, and containing VENDOR's recommendations for specific adjustments to rate base or revenue requirements in Docket No. 01-0423, as shown in sub-paragraph 3a.(2)(d) below, in accordance with the schedule established by AGENCY's Administrative Law Judges.
- (i) VENDOR shall track its data requests to ComEd and ComEd's responses to those data requests. VENDOR shall exchange information and otherwise communicate with AGENCY Project Manager on data request and response tracking. VENDOR will notify AGENCY Project Manager of any late or overdue data request responses as provided in subparagraph 3a.(2)(a)6 below.
- (j) VENDOR Engagement Director will meet with AGENCY Project Manager (on a day determined by AGENCY Project Manager), and such other AGENCY or VENDOR personnel as Project Manager designates, on a weekly basis (in person or by phone as required by AGENCY Project Manager) to review current activities and plan future actions.
- (k) While on ComEd's premises, VENDOR will comply with all ComEd rules and regulations and any governmental safety requirements, and not unreasonably interfere with ComEd's operations.
- (I) VENDOR shall acquire or maintain, at its expense, insurance that is appropriate in type and amount to cover its activities.
- (m) VENDOR and all persons performing work under this CONTRACT are bound to the provisions of Section 5-108 of the Illinois Public Utilities Act [220 ILCS 5/5-108].

(2) Audit reports.

- (a) Every Friday afternoon during the term of this contract, VENDOR shall e-mail a succinct, informal report to AGENCY Project Manager. The informal written report shall include the information listed below.
 - 1. A statement of the work completed by VENDOR during the past week.
 - 2. A statement of the work planned by VENDOR for the coming week.
 - 3. A statement of the extent to which VENDOR's audit work is on schedule, ahead of schedule, or behind schedule and VENDOR's planned actions for the coming week related to maintaining the schedule.
 - 4. The names of VENDOR auditors who will be on site during the coming two weeks.

- 5. VENDOR's plans for interviewing ComEd employees and any other persons during the coming two weeks, including names, dates, and subject matter.
- 6. Notice to AGENCY of data request responses that ComEd has not provided to VENDOR by deadline; provided that if, in VENDOR's judgment, data request issues more urgently require resolution at any point during the audit, VENDOR may immediately contact AGENCY Project Manager to initiate the two business day process for informal resolution of such issues (see subparagraph 3a.(2)(c)1 below).
- (b) Every month during the term of this CONTRACT, beginning 28 to 31 days following the date of execution of the CONTRACT, VENDOR shall provide electronically a written progress report to the AGENCY Project Manager. VENDOR shall author monthly progress reports using Microsoft Office 2000 software. Monthly progress reports shall include the information listed below.
 - 1. A description of the work performed by VENDOR in each work step in the detailed work plan. The description shall include the hours worked by each auditor on each work step and the total hours worked on each work step.
 - 2. Estimates, in percent, of the extent to which each work step is completed, both in hours expended and in necessary data collection and analysis functions finished.
 - 3. A description of any variations from the detailed work plan.
 - 4. A description of any changes that VENDOR recommends for the detailed work plan.
 - 5. A description of activities VENDOR plans for the coming month as per the work steps in the detailed work plan, including the work to be performed and the auditors assigned to the work.
 - 6. A description of any preliminary findings, including the possible amount of any rate base or revenue requirement adjustments.
 - 7. A statement that VENDOR has complied with GAGAS as covered in the detailed work plan approved by AGENCY Project Manager and an explanation of how VENDOR verified that compliance.
- (c) Not later than six months after the date of execution of this CONTRACT, VENDOR shall provide electronically to AGENCY and to the parties to Docket No. 01-0423 a written final report on the results of VENDOR's audit. The report shall be written with a view toward maximizing public understanding of the findings to the greatest extent practicable. If necessary in order to prevent public disclosure of information that is proprietary or confidential, the report shall be presented in two versions, one that contains all relevant information and findings, and a publicly available version from which information that is proprietary or confidential has been removed.
 - 1. The final audit report shall include at least the following information:
 - A. A statement that VENDOR has complied with GAGAS as covered in the detailed work plan approved by AGENCY Project Manager and an explanation of how VENDOR verified that compliance.
 - B. A description of VENDOR's auditing processes, methods, and activities, including the steps in the detailed work plan.

C. Pro forma adjustments.

- (i) Any pro forma adjustments that VENDOR has determined to be appropriate for O&M expenses in excess of a reasonable normalized level. For each adjustment, VENDOR shall include findings, conclusions, and recommendations as necessary to support the adjustment.
- (ii) Any proforma adjustments for plant-in-service rate base values resulting from expenditures that VENDOR has determined to be unreasonable or imprudent, or that are attributable to plant in service that is not used and useful. Proforma adjustments to plant-in-service rate base values will also quantify the associated impact on other components of the revenue requirement including, but not limited to, accumulated depreciation, accumulated deferred income taxes, and depreciation expense. For each adjustment, VENDOR shall include findings, conclusions, and recommendations as necessary to support the adjustment.
- (iii) All pro forma adjustments shall be presented in a format that will facilitate their inclusion in schedules substantially identical to those attached to the Commission's Interim Order in Docket No. 01-0423, except that such schedules shall reflect as their beginning point, the final revenue requirement approved by the Commission in its Interim Order.
- 2. The due date for the final report is subject to extension if ComEd is found by AGENCY to have not used its best efforts to provide on a timely basis information reasonably requested by VENDOR in a form that is usable by VENDOR. The time required for AGENCY to be advised of and rule upon the lack of VENDOR-requested information referred to in the sentence immediately preceding this sentence shall automatically toll, i.e., from the time VENDOR informs the AGENCY Staff that ComEd is not providing the requested information to and including the time at which AGENCY rules on this matter, the 6 months in which to conduct the audit, prepare the audit report and submit the audit findings and results to the parties in Docket No. 01-0423. Upon receiving word from the VENDOR that ComEd is not providing the requested information, the AGENCY Staff shall have two full business days in which to attempt to resolve the issues informally. If such informal processes do not result in a resolution of the issues, the VENDOR shall present the issues to AGENCY for formal resolution in Docket No. 01-0664.
- 3. VENDOR shall author the final report using Microsoft Office 2000 software.
- 4. No later than eight working days before the report due date, VENDOR shall provide a draft final report to AGENCY Project Manager. No later than five days before the report due date, AGENCY Project Manager shall provide comments on VENDOR's draft final report.
- (d) VENDOR shall present its audit findings in direct, rebuttal, and surrebuttal testimony by one or more expert witnesses as required and scheduled by AGENCY's Administrative Law Judges. Such testimony shall include specific recommended dollar amount adjustments to specifically identified revenue requirement items (operating and maintenance expense or rate base items), along with the complete factual basis for the recommended adjustment.
- **4. AGENCY Project Manager**. AGENCY Project Manager shall be Philliph Roy Buxton, 527 East Capitol Avenue, Springfield, IL 62701, phone (217) 785-5424 or other person so designated by the AGENCY. Use of the term "AGENCY Staff" within this CONTRACT refers to AGENCY Project Manager and other AGENCY

personnel who shall have a direct interest in this project. Where any dispute should arise concerning this project, AGENCY Project Manager shall make a final determination over any such disputed matters.

- 5. Services Provided. VENDOR and AGENCY agree to the provision of the following services.
 - a. AGENCY shall take all reasonable steps within its authority to enforce the obligations of ComEd under the Order to:
 - (1) provide space for the Vendor's auditors at Lincoln Center, Oakbrook Terrace, Illinois;
 - (2) identify ComEd point person(s) from whom VENDOR or the AGENCY Staff may request assistance with audit-related concerns;
 - (3) make ComEd personnel available to explain ComEd record-keeping processes and internal controls as determined necessary by VENDOR;
 - (4) present ComEd employees for interview as needed and attend interviews of current and former ComEd employees;
 - (5) respond to VENDOR information requests, and participate in meetings every two weeks with the VENDOR and the AGENCY Staff to discuss audit issues, review audit progress, and ensure adequacy of responses to auditor requests;
 - (6) pay VENDOR for audit costs, which include, in addition to the conduct of the audit itself, expert witness testimony, preparation for and attendance at hearings, and reasonable costs for retaining counsel throughout the audit process and throughout all evidentiary proceedings, including, by way of example, to conduct discovery, attend hearings, prepare and make all filings, including but not limited to briefs, represent VENDOR's expert witnesses, present VENDOR's expert witnesses for cross examination, cross examine witnesses, and introduce the audit report into the evidentiary record for consideration by AGENCY in the pending ComEd delivery services proceeding, Docket No. 01-0423, so that the results of the audit can be used in making rate base and revenue requirement determinations.
 - b. VENDOR shall provide:
 - (1) Sufficient number of auditors with required expertise and qualifications to provide the quality work products outlined in this contract;
 - (2) Accurate and complete records for each invoice item of Vendor monthly expense bills;
 - (3) Its own legal counsel for the services described in this CONTRACT, including, by way of example, to conduct discovery, attend hearings, prepare and make all filings, including but not limited to briefs, represent VENDOR's experts witnesses, present VENDOR's expert witnesses for cross examination, cross examine witnesses, and introduce the audit report into the evidentiary record for consideration by AGENCY in the pending ComEd delivery services proceeding, Docket No. 01-0423, so that the results of the audit can be used in making rate base and revenue requirement determinations:
 - (4) Expert witnesses and testimony for AGENCY hearings as required; and
 - (5) Reports, work papers, and audit updates as specified in this contract.
 - c. AGENCY shall provide:
 - a Project Manager for this contract;

- (2) a process to resolve issues associated with this contract; and
- (3) review of Vendor invoices.

6. Qualifications of VENDOR.

- a. Education. VENDOR Engagement Director shall possess, at a minimum, an undergraduate or graduate degree in engineering, business, accounting, management, or law. All VENDOR auditors shall have educational backgrounds appropriate to the areas/issues they will be assigned.
- b. Experience: VENDOR Engagement Director shall have a minimum of 10 years industry/ regulatory experience. VENDOR auditors shall have a minimum of 5 years relevant industry experience.
- c. Technical/Analytical Ability: VENDOR auditors must have the ability to investigate issues in the audit process created in AGENCY's February 6, 2002, order in Docket No. 01-0664, understand and analyze the information gathered, reach informed conclusions, and effectively communicate both verbally and in writing.
- d. GAGAS: VENDOR Engagement Director, Project Manager, Task Leaders, Consultants, Analysts, and other auditors shall possess all the necessary qualifications under GAGAS provisions applicable to this audit.

7.	Subcontracting/Joint Ventures.	Χ	Allowed	Not Allowed.

- a. The State intends to contract with one entity per contract and that entity shall be contractually responsible for performance. However, if the entity is a joint venture, one of the parties to the joint venture must take full contractual responsibility for performance under the CONTRACT.
- b. If VENDOR is providing Professional and Artistic Services, the names of subcontractors and amounts to be paid to each must be shown. The AGENCY may require the same or similar information in relation to contracts for other supplies or services. Subcontractors are subject to approval of the AGENCY

Attachment "a-3"

PRICING/COMPENSATION

- 1. Method and Rate of Compensation. Identify the method of charging (hourly, daily, project, item. or other method) and provide the rate or price for each type of supply or service.
 - a. Professional Fees. The professional fees shall be charged on a lump sum basis and paid according to the milestone and retainage provisions in paragraph 4 below. The amount of professional fees to be paid under this contract has been developed on the basis of the following rates and projected hours to be worked for each individual consultant:

Fees			
Position	Consultant	Hourly Rate	Total Hours
Engagement Director	Antonuk, J.	\$225	540
Advisor to Engagement Dir.	Stright	225	240
Project Manager	Joyner	185	720
Task Leaders	Ungerer	185	680
	Kalbarczyk	175	520
	Nelson	175	280
Consultants	Abramson	210	600
	Koppelman	210	480
	Romancheck	210	720
	Kozlosky	185	440
	Spangenberg	185	380
	Vickroy	185	600
	Vavro	165	720
	Morris	145	360
	St. John	145	480
Analyst	Antonuk, B.	130	640
	Acct/Analyst	120	640
	Acct/Analyst	120	640
	Acct/Analyst	110	640
	Acct/Analyst	110	640
	Acct/Analyst	110	640
Total Professional Hours			11,600
Total Professional Fees			\$1,903,800

b. Total hours of any consultant may be reallocated as determined by VENDOR Engagement Director and AGENCY Project Manager. However, in no event shall the total of VENDOR professional fees exceed the amount of \$1,903,800.00.

2. Expenses are estimated to be as follows:

Expenses

Travel	\$248,000
Miscellaneous (communications, mailing, copying)	\$18,000
Clerical (primarily M. Kreiser and S. III)	\$18,000
Total Expenses	\$284,000

VENDOR shall be reimbursed for reasonable, necessary, direct expenses incurred in fulfilling its obligations under this CONTRACT. Travel is reimbursed to and from the individual's home, office, or last work assignment. In cases where an individual is traveling from another assignment, the cost will be allocated (with documentation) between assignments. However, the amount will not be greater than if from the individual's home. Reasonable meals and miscellaneous expenses are charged at cost. However, receipts shall be attached to invoices where expenses exceed \$24.99. Communication, copying and mail costs are charged at cost.

- 3. Maximum Compensation for professional fees and expenses shall not exceed \$2, 187, 800
- 4. Payment Terms and Conditions (including when paid, frequency and retainage).
 - a. ComEd has been ordered to pay for this undertaking in the Order entered by the Commission on February 6, 2002, which is attached as a part of Agency Supplemental Terms and Conditions, Attachment "a-5". In all matters related to this undertaking, the Illinois Commerce Commission shall be the sole client of VENDOR. Staff is responsible for arranging for payment in accordance with the following.
 - (1) EXPENSES. As part of its regular monthly progress report, VENDOR shall submit an invoice for expenses which are directly related to this investigation. Upon Staff approval of these expense invoices, ComEd will pay the entire amount to VENDOR.
 - (2) PROFESSIONAL FEES. The compensation of professional fees for this CONTRACT shall be tied to the accomplishment of specific milestones for each Stage. These milestones will be considered achieved upon Staff approval of detailed work plans and various task, interim, and final reports. (Professional fees are subject to 10% retainage as described in paragraph 4b, below.) Upon completion of each milestone, the VENDOR shall submit an invoice for professional services to the AGENCY Project Manager.
 - b. Ten percent of all AGENCY approved professional fees will be retained until satisfactory completion of this CONTRACT. The 10% retainage will be released when all contractual obligations of the VENDOR have been fulfilled. The 10% retention will be permanently withheld from the VENDOR if:
 - (1) for reason(s) Staff believes to be within the VENDOR's control, the final reports are not filed with the Commission by the dates specified in the CONTRACT, or
 - (2) upon filing the final reports, a completely sourced copy of the final reports (with adequate supporting documentation) has not been submitted to and approved by Staff. As a part of this requirement, all of VENDOR's working papers used during the course of the investigation shall be turned over to Staff at the end of the investigation.

c. The specific milestones for VENDOR professional fees' payments are shown in the following table:

Milestone	% of Professional Fees Billed	% of Professional Fees Paid
Approved Detailed Work Plan	2.00%	1.80%
1st monthly progress report	16.00%	14.40%
2nd monthly progress report	30.00%	27.00%
3rd monthly progress report	44.00%	39.60%
4th monthly progress report	58.00%	52.20%
5th monthly progress report	72.00%	64.80%
Approved Final Audit Report	86.00%	77.40%
Testimony Before AGENCY, Final AGENCY Order, and Delivery of Work Papers to AGENCY	100.00%	100.00%

- **5. Tax Exemption.** The ordering AGENCY's Illinois tax exemption number is **E984-0855-04**. Federal tax exemption information is available upon request to the ordering agency.
- **6.** Legal expenses. VENDOR will retain counsel to provide the legal services required under the AGENCY Order in Docket No. 01-0664 and this CONTRACT. The provider of such legal services, and the fees and expenses for such services, will be identified in an amendment to this CONTRACT.

Attachment "a-4"

STANDARD TERMS, CONDITIONS AND CERTIFICATIONS

1. <u>TERM AND RENEWALS</u>: The length of the CONTRACT, including any renewals, may not exceed that allowed by law, including 30 ILCS 500/20-60. When the term begins on execution that means the date of final execution by the State. If the commencement of performance is delayed because the CONTRACT is not executed by the State on the start date, the State may change the start date, end date and milestones to reflect the delayed execution. No renewal may be effective automatically. No renewal may be effective solely at the VENDOR's option.

2. BILLING:

- a) VENDOR shall submit invoices to the address, on the schedule and with the detail required by the ordering AGENCY.
- b) VENDOR shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the State. The State does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.
- c) By submitting an invoice VENDOR certifies the supplies and services met all requirements of the CONTRACT, and the amount billed and expenses incurred are as allowed in the CONTRACT.
- 3. PAYMENT: The AGENCY will forward payment direction to ComEd in accordance with Attachment A-2.
 - a) Late payment charges, if any, shall not exceed the formula established in the State "Prompt Payment" Act (30 ILCS 540/1) and rules (74 III. Adm. Code 900). Payments delayed at the beginning of the State's fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.
 - b) Payment will be made in accordance with Attachments a-2, a-3, and a-5.
 - c) The approved invoice amount will be paid less any retainage and previous partial payments Final payment shall be made upon determination by the AGENCY that all requirements under this CONTRACT have been completed, which determination shall not be unreasonably withheld Such final payment will be made subject to adjustment after completion of an audit of VENDOR's records as provided for in this CONTRACT.
 - d) As a condition of payment, VENDOR must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, security guard and food service), and must pay its suppliers and subcontractors providing lien waivers on request.
- 4. CONSULTATION: VENDOR shall keep the AGENCY fully informed as to the progress of matters covered by this CONTRACT. Nothing in this paragraph limits the obligations of the VENDOR under other provisions of this CONTRACT, including those set forth in attachments a-2 and a-3.
- 6. PERFORMANCE REVIEWS: The State may conduct a post performance review of the VENDOR's performance under the CONTRACT. Any professional and artistic services performed under this CONTRACT shall be subject to a post performance review. The VENDOR shall cooperate with the State in this review, which may require that VENDOR provide records of its performance and billing. VENDOR shall provide any required information within 30 days of the AGENCY's request. This post performance review may be used by any State agency in determining whether to enter into other contractual relationships with the VENDOR

- 7. AUDIT / RETENTION OF RECORDS (30 ILCS 500/20-65): VENDOR and its subcontractors shall maintain books and records relating to performance of the CONTRACT or subcontract and necessary to support amounts charged under the CONTRACT or subcontract. Books and records shall be maintained by the VENDOR for a period of 3 years from the later of the date of final payment under the CONTRACT or completion of the CONTRACT, and by the subcontractor for a period of 3 years from the later of the date of final payment under the subcontract or completion of the subcontract. The 3-year period shall be extended for the duration of any audit in progress during the term. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, the AGENCY and other governmental entities with monitoring authority upon reasonable notice and during normal business hours. VENDOR and its subcontractors shall cooperate fully with any such audit. Failure to maintain books and records required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid under the CONTRACT for which adequate books and records are not available to support the purported disbursement.
- **8. SCHEDULE OF WORK:** Any work performed on State premises shall be done during the hours designated by the State and shall in any event be performed so as to minimize inconvenience to the State and its personnel and minimize interference with the State's operations.
- **9. INDEPENDENT CONTRACTOR:** The VENDOR shall be an independent contractor. Supplies provided and/or services performed pursuant to this CONTRACT are not rendered as an employee of the AGENCY or of the State of Illinois. Amounts paid pursuant to this CONTRACT do not constitute compensation paid to an employee.
- 10. RESPONSIBILITY FOR AGENTS AND EMPLOYEES: VENDOR shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of VENDOR's duties under this CONTRACT. VENDOR represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the AGENCY determines that any individual performing services for VENDOR hereunder is not providing such skilled services, it shall promptly so notify VENDOR and VENDOR shall replace that individual.

11. ASSIGNMENT AND SUBCONTRACTING:

- a) VENDOR may not assign, subcontract, or transfer any interest in the work subject of this CONTRACT without AGENCY's prior written consent. In the event the AGENCY consents, the terms and conditions of this CONTRACT shall apply to and bind the party to whom such work is subcontracted, assigned, or transferred as fully and completely as VENDOR is hereby bound and obligated. This includes requiring such parties to submit certifications and disclosures to AGENCY for review and approval upon request.
- b) Where VENDOR is providing professional and artistic services, names and addresses of all subcontractors utilized by VENDOR shall be listed in an addendum to this CONTRACT together with the anticipated amount of money that the subcontractor is expected to receive pursuant to this CONTRACT (30 ILCS 500/35-40).
- c) If VENDOR is unable to secure or maintain individuals named in the CONTRACT to render the services, VENDOR shall not be relieved of its obligations to complete performance. ACENCY shall have the option to accept a substitute or to terminate the CONTRACT.
- d) After notice, AGENCY may transfer the CONTRACT or payment responsibility to another State agency, or assign the CONTRACT to a third-party for financing purposes.
- **12. LICENSE:** VENDOR, directly or through its employees, shall have and maintain any required license. With consent of the AGENCY, VENDOR may meet the license requirement through a subcontractor.

13. MAINTENANCE ASSURANCE:

- a) The AGENCY reserves the right to maintain any equipment purchased under this CONTRACT using AGENCY personnel or third-party maintainers. In such case, VENDOR shall provide the AGENCY or its maintenance provider with such services, documentation, materials and parts under reasonable terms and conditions and at reasonable costs. The AGENCY reserves the right to return to VENDOR's maintenance following written certification by VENDOR that the equipment is eligible for VENDOR's maintenance. VENDOR's standard charges for the certification inspection, plus any applicable charges required to bring the equipment into eligibility for VENDOR's maintenance shall apply. Exercise of these rights by the AGENCY shall be without penalty or sanction by VENDOR.
- b) If VENDOR discontinues service or maintenance of equipment or software provided under this CONTRACT, VENDOR shall provide to the AGENCY at no cost adequate documentation and access to specialized or proprietary tools to allow the AGENCY or a subcontractor to maintain the equipment or software. This provision shall not apply if VENDOR arranges for continued service and maintenance through another vendor and at a price acceptable to the AGENCY.

14. CONFIDENTIALITY AND USE OF WORK PRODUCT:

- a) Any documents or information obtained by VENDOR from the AGENCY in connection with this CONTRACT shall be kept confidential and shall not be provided to any third party unless disclosure is approved in writing by the AGENCY. Any documents or data obtained by VENDOR from the AGENCY or from Commonwealth Edison Company in connection with carrying out the services under this CONTRACT shall be kept confidential and not provided to any third party unless disclosure is approved in writing by the AGENCY. VENDOR will function as an extension of the ICC Staff for purposes of Sections 5-108 and 10-107 of the Public Utilities Act.
- b) Unless otherwise agreed in writing the following applies. Work product produced under this CONTRACT, including, but not limited to, documents, reports, information, documentation of any sort and ideas, whether preliminary or final, shall become and remain the property of the STATE, including any patent, copyright or other intellectual property rights. With the exception of ideas, all such work products shall be considered works made for hire within the meaning of 17 U.S.C. §101. To the extent that any portion of such work product is not a work made for hire, VENDOR completely and without reservation assigns to the AGENCY all right, title and interest in and to such portion of the work products, as well as all related intellectual property rights, including patent and copyright. AGENCY shall exercise all rights of ownership in all such work product without restriction or limitation including as to use, and without further compensation to VENDOR. VENDOR shall not acquire or have any right to use, disclose or reproduce the work product or any equipment, documents, information, media, software, or know-how obtained from the State except to perform this CONTRACT. Nothing herein shall be construed as precluding the use of any information independently acquired by VENDOR without such limitation.
- c) The ideas, methodologies, processes, inventions and tools (including computer hardware and software where applicable) that VENDOR previously developed and brings to the AGENCY in furtherance of performance of the CONTRACT shall remain the property of the VENDOR. VENDOR grants to the AGENCY a nonexclusive license to use and employ such software, ideas, concepts, methodologies, processes, inventions and tools solely within its enterprise.

15. WARRANTY:

a) VENDOR warrants that all services will be performed in a good and professional manner.

Unless otherwise agreed, VENDOR warrants that supplies shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty and shall perform in accordance with manufacturer's published specifications. VENDOR warrants it has title to, or the right to

- allow the State to use, the supplies and services being provided and that the State may use same without suit, trouble or hindrance from VENDOR or third parties.
- b) VENDOR, for itself and its subcontractors and agents, represents and warrants that: (i) all products delivered and services performed under this CONTRACT (the "Products") are "Year 2000 Compliant," and will and are designed to accurately receive, retrieve, process, provide and output date/time data from, in and between the twentieth and twenty-first centuries, and from, in and between the years 1999 and 2000. In the event of a breach of this Year 2000 warranty, VENDOR shall, at its sole expense and without interrupting ongoing business of the State, immediately take all necessary actions to cure the breach.

16. LIABILITY AND INSURANCE:

- a) VENDOR agrees to assume, without limitation, all risk of loss and to indemnify and hold the State, its officers, agents and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs. attorneys' and witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the State) resulting from the negligence or misconduct of VENDOR, its employees, agents, or subcontractors in the performance of the CONTRACT. VENDOR shall assume risk of loss until delivery to the AGENCY's facility. VENDOR shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction or damage to State property, and shall at the State's request and expense, furnish to the State reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery.
- b) VENDOR shall maintain public liability, casualty and auto insurance in sufficient amount to protect the State from liability for acts of VENDOR and risks and indemnities assumed by VENDOR. If VENDOR does not have minimum coverage for bodily injury of \$250,000 per person/\$500,000 per occurrence, and for property damage, \$100,000 per occurrence, VENDOR must inform the AGENCY and seek written permission for lesser coverage. VENDOR shall carry Worker's Compensation Insurance in amount required by law. Upon request, VENDOR shall provide and maintain any bond required by law or the AGENCY. VENDOR shall provide copies of certificates of insurance evidencing the coverage described in this paragraph.
- c) VENDOR shall, without limitation, at its expense defend the AGENCY against all claims asserted by any person that anything provided by VENDOR infringes a patent, copyright, trade secret or other intellectual property right and shall, without limitation, pay the costs, damages and attorneys' fees awarded against the AGENCY in any such action, or pay any settlement of such action or claim. Each party agrees to notify the other promptly of any matters to which this provision may apply and to cooperate with each other in connection with such defense or settlement. If a preliminary or final judgment shall be obtained against the AGENCY's use or operation of the items provided by VENDOR hereunder or any part thereof by reason of any alleged infringement, VENDOR shall, at its expense and without limitation, either (a) modify the item so that if becomes noninfringing; or (b) procure for the AGENCY the right to continue to use the Item; or (c) substitute for the infringing item other item(s) having at least equivalent capability; or (d) refund to the AGENCY an amount equal to the price paid, less reasonable usage from installation acceptance through cessation of use, which amount shall be calculated on a useful life not less than 5 years, and plus any additional costs the State may incur to acquire substitute supplies or services.
- d) AGENCY assumes no liability for actions of VENDOR and is unable to indemnify or hold VENDOR or any third-party harmless for claims based on this CONTRACT or use of VENDOR provided supplies or services. Unless provided by law, VENDOR is not eligible for indemnity under the State Employee Indemnification Act (5 ILCS 350/1). The State's liability for damages is

- expressly limited by and subject to the provisions of the Illinois Court of Claims Act (705 ILCS 505/1) and to the availability of suitable appropriations.
- e) Neither party shall be liable for incidental, special or consequential damages.
- 17. <u>TAX COMPLIANCE:</u> VENDOR shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.
- 18. SOLICITATION AND EMPLOYMENT: VENDOR shall not employ any person employed by the AGENCY during the term of this CONTRACT to perform any work required by the terms of this CONTRACT. As a condition of this CONTRACT, the VENDOR shall give notice immediately to the AGENCY's Director if VENDOR solicits or intends to solicit for employment any of the AGENCY's employees during the term of this CONTRACT. AGENCY has no authority to contractually refuse to hire VENDOR's employees who apply to the State for employment.
- 19. <u>BACKGROUND CHECK:</u> The State may conduct criminal and driver history background checks of VENDOR's officers, employees or agents who would directly supervise or physically perform the CONTRACT requirements at State facilities. Any officer, employee or agent deemed unsuitable by the State must be replaced immediately.
- 20. <u>LEGAL ABILITY TO CONTRACT: VENDOR certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:</u>
 - a) VENDOR, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and applicable rules in performance under this CONTRACT
 - b) VENDOR is not in default on an educational loan (5 ILCS 385/3).
 - c) VENDOR has informed the director of the AGENCY in writing if VENDOR was formerly employed by that AGENCY and has received an early retirement incentive under Section 14-108.3 or 16-133.3 of the Illinois Pension Code (30 ILCS 105/15a).
 - d) VENDOR has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempted to bribe (30 ILCS 500/50-5).
 - e) If VENDOR has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business (30 ILCS 500/50-10).
 - f) VENDOR is not barred from being awarded a contract because the VENDOR is delinquent in the payment of any debt to the State, unless VENDOR has entered into a deferred payment plan to pay off the debt, and VENDOR acknowledges the contracting state agency may declare the contract void if the certification is false (30 ILCS 500/50-11, effective July 1, 2002).
 - g) VENDOR has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has VENDOR accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract (30 ILCS 500/50-25).
 - h) VENDOR is not in violation of the "Revolving Door" section of the Illinois Procurement Code (30 ILCS 500/50-30).

- i) VENDOR will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anticompetitive practice among any bidders, offerors, contractors, proposers or employees of the State (30 ILCS 500/50-40, /50-45, /50-50).
- j) VENDOR will, pursuant to the Drug Free Workplace Act, provide a drug free workplace, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the CONTRACT. This certification applies to CONTRACTS of \$5000 or more with individuals; and to entities with twenty-five (25) or more employees (30 ILCS 580).
- k) Neither VENDOR nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to CONTRACTS that exceed \$10,000 (30 ILCS 582).
- I) VENDOR has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State or of the United States (720 ILCS 5/33E-3, 5/33E-4).
- m) VENDOR complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
- n) VENDOR does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" (775 ILCS 25/2).
- 21. <u>CONFLICTS OF INTEREST:</u> VENDOR has disclosed, and agrees it is under a continuing obligation to disclose to the AGENCY, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit VENDOR from having or continuing the CONTRACT. This includes, but is not limited to conflicts under the "Infrastructure Task Force fee prohibition" section of the State Finance Act (30 ILCS 105/8.40), Article 50 of the Illinois Procurement Code (30 ILCS 500/50), or those which may conflict in any manner with the VENDOR's obligation under this CONTRACT. VENDOR shall not employ any person with a conflict to perform under this CONTRACT. If any conflict under Section 50-13 exists, no contract may be issued without an exemption from the Governor pursuant to Section 50-20 of the Illinois Procurement Code. An exemption is necessary if:
 - a) the person intending to contract with the State, their spouse or minor child:
 - 1) holds an elective office in Illinois;
 - 2) holds a seat in the Illinois General Assembly;
 - 3) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or
 - 4) holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor (currently \$90,420.00). (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.)
 - b) the contract is with a firm, partnership, association or corporation in which a person covered by item (a) above receives more than 7½% of the total distributable income or an amount in excess of the salary of the Governor (currently \$150,700.00).

- c) the contract is with a firm, partnership, association or corporation in which a person covered by item (a), together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor (currently \$301,400.00) from the firm, partnership, association or corporation.
- 22. BREACH AND OTHER FOR CAUSE TERMINATION: AGENCY may terminate this CONTRACT without penalty to the AGENCY or further payment required in the event of: (i) any breach of this CONTRACT which, if it is susceptible of being cured, is not cured within 15 days of the AGENCY giving notice of breach to VENDOR, including but not limited to failure of VENDOR to maintain covenants, representations, warranties, certifications, bonds and insurance; (ii) commencement of a proceeding by or against VENDOR under the U.S. Bankruptcy Code or similar law; or any action by VENDOR to dissolve, merge, or liquidate; or (iii) material misrepresentation or falsification of information provided by VENDOR in the course of any dealing between the PARTIES or between VENDOR and any State agency.
- 23. <u>FORCE MAJEURE:</u> Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots, labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.
- 24. ANTITRUST ASSIGNMENT: VENDOR hereby assigns, sells and transfers to the State of Illinois all right, title and interest in and to any claims and causes of action arising under antitrust laws of Illinois or the United States relating to the subject matter of the CONTRACT.
- **25. NON-DISCRIMINATION:** In compliance with the State and Federal Constitutions, the Illinois Human Rights Act. the U. S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the AGENCY does not unlawfully discriminate in employment, contracts, or any other activity.
- 26. APPLICABLE LAW: This CONTRACT shall be construed in accordance with and be subject to Illinois laws and rules, including the Standard Procurement Rules (44 III. Adm. Code 1). The Department of Human Rights' Equal Opportunity requirements are incorporated by reference (44 III. Adm. Code 750). Any claim against the State arising out of this CONTRACT must be filed exclusively with the Illinois Court of Claims (705 ILCS 505/1). The State shall not enter into binding arbitration to resolve any CONTRACT dispute. The State of Illinois does not waive sovereign immunity by entering into this CONTRACT. Any provision containing a citation to an Illinois statute (cited ILCS) may not contain complete statutory language. The official text, which is incorporated by reference, can be found in the appropriate chapter and section of the Illinois Compiled Statutes. An unofficial version can be viewed at http://www.legis.state.il.us/.
- 27. Notices shall be in writing and may be delivered by any means. Notices by fax must show the date/time of successful receipt. Notices to VENDOR shall be sent to the person shown on the signature page. Notices to AGENCY shall be sent to the executive head of the AGENCY at AGENCY headquarters. Notice of any name, address, or fax number change shall be given to the other in writing.
- 28. ENTIRE CONTRACT: This CONTRACT, with attachments, constitutes the entire agreement between the PARTIES concerning the subject matter of the CONTRACT. Modifications and waivers must be in writing and signed by authorized representatives of the PARTIES. Any provision of this CONTRACT officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions of this CONTRACT shall be interpreted, as far as possible, to give effect to the PARTIES' intent. All provisions that by their nature would be expected to survive, shall survive termination of this CONTRACT, including without limitation provisions relating to confidentiality, warranty, ownership and liability.
- 29. <u>CONTRACTING AUTHORITY:</u> Certain contracts must be signed or approved by the Director of the Department of Central Management Services (CMS) before they are binding on the State. In those instances CMS shall not be responsible for costs or funding even though payments may be made through CMS' facilities.

Attachment "a-5"

AGENCY SUPPLEMENTAL TERMS AND CONDITIONS

The following CONTRACT:	supplemental terms and conditions, if checked, are attached and are applicable to this
_	Public Works Requirements.*
_	Prevailing Wage (janitorial, security guard, window washing and food service if valued at more than \$200 per month or \$2000 per year).*
_	Prevailing Wage (all printing contracts).*
	Prohibition on Contingent Fees (certain federally funded contracts)
_X	Other (describe) Illinois Commerce Commission Order in Docket No. 01-0664

*Information regarding prevailing wage, benefit and working condition requirements may be obtained from the Illinois Department of Labor (217-782-6206) and information may be viewed at their web site (www.state.il.us.agency/idol/). You must check with IDOL before submitting your offer to determine the prevailing wages, benefits and working conditions applicable to this solicitation.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The City of Chicago, an Illinois municipal corporation, The People of the State of Illinois, by and through James E. Ryan, Attorney General of the State of Illinois, The Cook County State's Attorney's Office, ex rel. Richard A. Devine, State's Attorney of Cook County, and The Citizens Utility Board

01-0664

Petition for Investigation and Audit of certain distribution system investments and other expenditures by Commonwealth Edison Company.

ORDER

By the Commission;

On October 25, 2001, the City of Chicago, the People of the State of Illinois by and through James E. Ryan, Attorney General of the State of Illinois, the Cook County State's Attorney's Office ex rel. Richard A. Devine, State's Attorney of Cook County, and the Citizens Utility Board ("Petitioners") filed with the Illinois Commerce Commission ("Commission") a Petition to initiate an investigation and audit, pursuant to the Commission's authority under the Public Utilities Act ("PUA"), to enforce the mandates of the PUA that the Commission include in the rates of Commonwealth Edison Company ("ComEd" or "Company") only those costs that are reasonably and prudently incurred, and to include in ComEd's rate base only such investment as is prudent and used and useful ("Petition"). Petitioners also submitted a Memorandum in support of the Petition ("Memorandum").

Petitions for leave to intervene were filed by AES NewEnergy, Inc. ("NewEnergy"), on November 9, 2001, and by Commonwealth Edison Company ("ComEd") on November 14, 2001. The Administrative Law Judges granted ComEd's Petition for Leave to Intervene on November 14, 2001; NewEnergy's Petition to Intervene is hereby granted.

On November 16, 2001, ComEd filed its Motion to Dismiss Petition for Investigation and Audit ("Motion to Dismiss"). Petitioners, the Commission Staff ("Staff"), and NewEnergy filed Responses to both the Petition and the Motion to Dismiss on November 30, 2001. Petitioners' filed their Reply to Responses to Petition for Investigation and Audit on December 7, 2001, and ComEd filed its Reply in Support of Motion to Dismiss Petition for Audit and Investigation on December 14, 2001.

On January 23, 2002, Petitioners, ComEd, NewEnergy and Staff filed a Joint Motion for Agreed Order ("Joint Motion"). The Joint Motion states that after filing their respective pleadings in this case, the parties and Staff engaged in a number of discussions with a view toward exploring possible areas of compromise. These discussions ultimately led to the development of an agreement among all parties to the following resolution to the issues in this case:

1. There will be an audit, limited in scope to rate case (operating and maintenance expense, and rate base) revenue requirement impacts in Docket No. 01-0423 of the remedial activities across the entire ComEd transmission and distribution system identified in (A) the reports of ComEd to the Commission and the City of Chicago in September and December 1999, and subsequent reports by ComEd to the Commission and the City of the ComEd system rehabilitation program, (B) the reports to the Commission prepared by Vantage Consulting, Inc., in 1999, and by The

Liberty Consulting Group in 2000 and 2001, and (C) ComEd responses to the Vantage and Liberty reports.

2. ComEd will pay for the audit costs, which are agreed to include, in addition to the conduct of the audit Itself, witness testimony, preparation for and attendance at hearings. ComEd will also pay the auditors' reasonable costs for retaining counsel throughout the audit process and throughout all evidentiary proceedings, including, by way of example, to conduct discovery, attend hearings, prepare and make all filings, including but not limited to briefs, represent auditor witnesses, present auditor witnesses for cross examination, cross examine witnesses, and introduce the audit report into the evidentiary record for consideration by the Commission in the pending ComEd delivery services proceeding, Docket No. 01-0423, so that the results of the audit can be used in making rate base and revenue requirement determinations.

The auditor and its counsel will not be a party to Docket No. 01-0423, but will take steps necessary for the introduction of evidence and the creation, through briefs or argument, of a full explanation of the factual and legal bases for any adjustments to rate base or revenue requirements the auditor recommends.

- 3. The time permitted for conducting the audit and preparing the audit report, measured from the date on which the auditor procurement process is complete and the audit contract awarded through the date on which the report of audit findings and results are submitted to the parties in Docket No. 01-0423, will not exceed 6 months, unless ComEd is found by the Commission to have not used its best efforts to provide on a timely basis information reasonably requested by the auditor in a form that is usable by the auditor. The time required for the Commission to be advised of and rule upon the lack of auditor requested information referred to in the sentence immediately preceding this sentence shall automatically toll, i.e., from the time the auditor informs the Commission Staff that ComEd is not providing the requested information to and including the time at which the Commission rules on this matter, the 6 months in which to conduct the audit, prepare the audit report and submit the audit findings and results to the parties in Docket No. 01-0423. Upon receiving word from the auditor that ComEd is not providing the requested information, the Commission Staff shall have two full business days in which to attempt to resolve the issues informally. If such informal processes do not result in a resolution of the issues, the auditor shall present the issues to the Commission for formal resolution in Docket No. 01-0664, which will be kept open for the resolution of such issues. The procurement process is to be completed as expeditiously as possible. The Administrative Law Judges and Commission will determine the time required for evidentiary and final order processes.
- 4. Mechanics of monitoring procedures.
 - a. The General Accounting Office's "Generally Accepted Government Auditing Standards" ("GAGAS"), as applicable to an undertaking of this nature, will control the conduct of the audit.
 - b. The Commission will select the auditor, and Staff will act as the audit project manager and will be the sole entity administering the audit process.
 - c. The auditors will be contractually bound to the provisions of Section 5-108 of the Public Utilities Act.
 - d. ComEd will:
 - (i) provide space for the auditor at Lincoln Center, Oakbrook Terrace, Illinois;
 - (ii) identify ComEd point person(s) from whom Commission Staff or auditor may request assistance with audit-related concerns;

- (iii) be available to explain ComEd record-keeping processes and internal controls as determined necessary by the auditor;
- (iv) present ComEd employees for interview as needed and attend interviews of current and former ComEd employees;
- (v) participate in bi-weekly meetings with the auditor and Staff to discuss audit-related issues, review audit progress, and ensure adequacy of responses to auditor requests
- 5. Process of moving audit findings/results into evidentiary record; permissible bases for party litigation about what may be admitted into evidentiary record.
 - a. Entities agreeing to the audit process may contest the validity and correctness of audit findings and their rate case revenue requirement impacts, but may not object to the auditor's report becoming part of the evidentiary record in the pending ComEd delivery services proceeding, Docket No. 01-0423.
 - b. Staff and all parties in Docket No. 01-0423 may introduce evidence from their own witnesses in addressing or contesting the auditor's evidence.
- 6. As will be more fully described in a pleading to be filed by Joint Movants in Docket No. 01-0423, the Commission will use the current record in 01-0423 to determine a delivery services revenue requirement it will use to set residential delivery services rates by April 1, 2002. This will allow the Commission to comply with the requirement of 16-108(b) that the Commission approve or approve as modified the tariff filed by the utility under 16-108(a) no later than 30 days prior to the date on which the utility must commence offering services. The Joint Movants will request that the April 1, 2002. order expressly state that it is an interim order, and that the litigation in Docket No. 01-0423 will continue for an overall determination of the delivery services revenue requirement, based upon evidence already in the record as well as the evidence adduced on behalf of the auditors. Commission will not enter any order in Docket No. 01-0423 addressing the level of non-residential delivery services rates until the audit has been completed, the evidentiary and litigation process has been concluded and a final order taking into consideration the audit and the evidence submitted by parties addressing or contesting the auditors evidence has been issued in Docket No. 01-0423. Prior to that time, the Commission may enter an order based upon the evidence in the record in Docket No. 01-0423 addressing the rate design of non-residential delivery services tariffs; provided, however, that such changes in rate design, if any, would not take effect until the Commission enters a final Order that takes into consideration the results of the audit. The final Order will make a determination of overall delivery services revenue requirements based on all evidence in the record in Docket No. 01-0423, including evidence related to the results of the audit. Rates will be designed in the final order to allocate the final revenue requirement among all classes of delivery service customers, residential and non-residential. The Commission will review all of the evidence in the record and determine whether and how residential DST rates will be changed from levels set in April 2002 in Docket No. 01-0423, and determine whether and how non-residential DST rates will be changed from levels set in Docket No. 99-0117. NewEnergy expressly reserves its right to continue to assert in Docket No. 01-0423 that the Commission does not have the authority to increase non-residential delivery services rates during the mandatory transition period; and NewEnergy and Petitioners expressly reserve their rights to continue to assert that the Commission should phase-in or otherwise moderate the impact of any increases in revenue requirements.

The Commission, having reviewed the record in this proceeding, concludes that the agreed Order presented by the parties and Staff represents a reasonable resolution of the issues in this matter. Being fully advised in the premises, the Commission is of the opinion and finds as follows:

(1) that it has jurisdiction over the subject matter of this proceeding and the parties hereto;

- (2) the recitals set forth in the prefatory portion of this order are hereby adopted as findings of fact, and the resolution of the issues in this proceeding as presented above should be adopted by the Commission as reasonable;
- (3) an audit of the scope set forth in the prefatory portion of this order should be conducted in the manner set forth hereinabove.

IT IS THEREFORE ORDERED that the resolution of the issues in this proceeding as presented above is hereby adopted by the Commission as reasonable, and that an audit of the scope set forth in the prefatory portion of this order shall be conducted in the manner set forth hereinabove.

IT IS FURTHER ORDERED that the Commission directs its Staff to take all steps necessary to effectuate the audit described in this Order.

IT IS FURTHER ORDERED that this proceeding shall be considered open upon the filing of a document by the auditor presenting one or more issues for formal Commission resolution under Item 3 in the prefatory portion of this order, in the absence of such a filing, subject to Section 10-113 of the Public Utilities Act and 83 III. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 6th day of February, 2002.

Chairman